U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33347980

Date: AUG. 22, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Multinational Managers or Executives)

The Petitioner, a distributor of natural hair cosmetic products, seeks to permanently employ the Beneficiary as its chief executive officer under the first preference immigrant classification for multinational executives or managers. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(C), 8 U.S.C. § 1153(b)(1)(C). This classification allows a U.S. employer to permanently transfer a qualified foreign employee to the United States to work in a managerial or executive capacity.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner has a qualifying relationship with the Beneficiary's former foreign employer. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

An immigrant visa is available to a beneficiary who, in the three years preceding the filing of the petition, has been employed outside the United States for at least one year in a managerial or executive capacity, and seeks to enter the United States in order to continue to render managerial or executive services to the same employer or to its subsidiary or affiliate. Section 203(b)(1)(C) of the Act.

The Form I-140, Immigrant Petition for Alien Workers, must include a statement from an authorized official of the petitioning United States employer which demonstrates that the beneficiary has been employed abroad in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition, that the beneficiary is coming to work in the United States for the same employer or a subsidiary or affiliate of the foreign employer, and that the prospective U.S. employer has been doing business for at least one year. *See* 8 C.F.R. § 204.5(j)(3).

The sole issue before us on appeal is whether the Petitioner established that it has a qualifying relationship with the Beneficiary's previous foreign employer, a Chinese company.

To establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the "same employer" or related as "parent and subsidiary" or as "affiliates." *See* section 203(b)(1)(C) of the Act; *see also* 8 C.F.R. § 204.5(j)(2) (providing definitions of the terms "affiliate" and "subsidiary").

Regulation and case law confirm that ownership and control are the factors that must be examined in determining whether a qualifying relationship exists between United States and foreign entities. *See, e.g.*, *Matter of Church Scientology Int'l*, 19 I&N Dec. 593 (Comm'r 1988); *Matter of Siemens Med. Sys., Inc.*, 19 I&N Dec. 362 (Comm'r 1986); *Matter of Hughes*, 18 I&N Dec. 289 (Comm'r 1982). Ownership refers to the direct or indirect legal right of possession of the assets of an entity with full power and authority to control; control means the direct or indirect legal right and authority to direct the establishment, management, and operations of an entity. *Matter of Church Scientology Int'l*, 19 I&N Dec. at 595.

The Petitioner has consistently claimed that it is a subsidiary of the Beneficiary's foreign employer based on that entity's ownership of 98 percent of its issued stock. The Director acknowledged that the Petitioner submitted a company statement attesting to the parent-subsidiary relationship, a statement from its accountant, and complete copies of its 2021 and 2022 federal income tax returns in support of this claim but determined the evidence was insufficient to establish the elements of ownership and control.

On appeal, the Petitioner asserts that it provided documentation that was specifically requested in the Director's request for evidence (RFE) and contends that the Director did not adequately explain why it was insufficient to meet its burden of proof.[1] While we agree with the Director's determination that tax returns and a company statement alone are generally insufficient to demonstrate a qualifying relationship, the RFE did not provide the Petitioner with adequate notice of this fact. Therefore, we will consider the Petitioner's supplemental evidence submitted on appeal.

The Petitioner resubmits the previously submitted tax returns, provides a new statement from its accountant, and submits the following corporate documentation: a copy of its initial certificate of filing and certificate of formation filed with the Texas Secretary of State; two certificates of amendment filed with the Texas Secretary of State; and a stock transfer agreement executed in 2019, through which the foreign entity acquired its ownership interest in the U.S. company. This evidence corroborates the Petitioner's consistent claim that the foreign entity owns 98% of its issued shares. Therefore, we conclude the Petitioner has demonstrated, by a preponderance of the evidence, that it is a subsidiary of the Beneficiary's foreign employer. As this issue formed the sole basis for denial of the petition, the Director's decision is withdrawn.

However, there are two additional issues that warrant the remand of this matter to the Director. First, we note that a recent search of public information available from the Texas Comptroller of Public

[1] The Director's RFE issued on October 31, 2023, addressed the qualifying relationship eligibility requirement and informed the Petitioner that it could submit evidence including, but not limited to "a statement from an authorized official of your organization which indicates that you are the same employer or a parent, subsidiary or affiliate of the firm or corporation or other legal entity which employed the beneficiary abroad." The Director also advised the Petitioner that it could provide, among other items, copies of U.S. tax returns (including all attachments and schedules), as evidence showing "who owns and controls your organization."

Accounts shows that the Petitioner's right to transact business in the State of Texas has been "forfeited." *See* https://mycpa.cpa.state.tx.us/coa/coaSearchBtn. On remand, the Director should issue a new RFE and provide the Petitioner an opportunity to submit supplementary evidence of its company status and ongoing business operations in accordance with 8 C.F.R. § 103.2(b)(8) and 103.2(b)(16)(i).

The Petitioner must also establish its ability to pay the Beneficiary's proffered wage of $60,000 per year from the time the priority date is established and continuing until the Beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay generally must include copies of annual reports, federal tax returns, or audited financial statements. *Id.*

The priority date is October 16, 2023, the date the Petitioner filed the petition. *See* 8 C.F.R. § 204.5(d) (explaining how to determine a petition's priority date). The Petitioner previously submitted its 2021 and 2022 federal tax returns, but its 2023 tax return was not available at the time it filed the petition or responded to the Director's RFE. As the matter will be remanded, the Director should request that the Petitioner provide its 2023 federal tax return, audited financial statements, or annual report, as well as any other evidence of its continuing ability to pay the proffered wage.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.